UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GAP, INC. and GAP (APPAREL) LLC, Plaintiffs, -against- G.A.P ADVENTURES INC., Defendant.	07 Civ. 9614 (AKH) *Filed via ECF*

DEFENDANT'S MOTION TO PERMIT THE INTRODUCTION OF EVIDENCE AT TRIAL PRODUCED PURSUANT TO FED. R. Civ. P. 26(e) OR, IN THE ALTERNATIVE, THAT THE COURT REOPEN DISCOVERY

Defendant moves that the Court permit the introduction of evidence at trial produced pursuant to Fed. R. Civ. P. 26(e) or, in the alternative, as the Court suggested at the January 14, 2011 status conference in this case, to reopen discovery with respect to rebuttal trial evidence located and collected by Defendant's counsel after close of discovery that consists of public information and public and/or governmental documents equally available to both parties.

The motion is made in the alternative because Defendant did not seek – and does not seek – discovery under the Federal Rules of Civil Procedure from Plaintiffs or any third party. As explained in the accompanying Memorandum and Declaration of Pasquale A. Razzano, the additional documents produced after close of discovery consist of publicly available documents concerning, and photographs of, operating businesses using the word "gap" in their name or trademark. To the extent Plaintiffs believe they need "discovery" regarding those documents and things collected by Defendant, the individuals hired by Defendant's counsel to collect and authenticate the evidence are available for deposition over the next three months before trial.

Both parties to this action have collected and produced evidence to each other pursuant to Rule 26(e) after the close of discovery, and Plaintiffs have known since at least as early as August 2010 of the third parties about whom Defendant has collected the evidence at issue. That evidence is publicly available rebuttal evidence to the claims on which Plaintiffs have the burden of proof and is highly important to Defendant's defense; that public information was equally available to all parties; there is no need for a continuance as more than three months remain before trial; and the evidence at issue was produced pursuant to Fed. R. Civ. P. 26(e).

Respectfully submitted,

Dated: January 28, 2011

FITZPATRICK, CELLA, HARPER
& SCINTO

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2. MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO PERMIT INTRODUCTION OF EVIDENCE AT TRIAL PRODUCED PURSUANT TO FED. R. CIV. P. 26(e) OR, IN THE ALTERNATIVE, THAT THE COURT REOPEN DISCOVERY

3. DECLARATION OF PASQUALE A. RAZZANO

Exhibit A	Civil Docket for Case #1:07-cv-09614 AKH
Exhibit B	Transcript of Hearing held April 16, 2010
Exhibit C	Order of May 7, 2010
Exhibit D	G.A.P Adventures Responses to Plaintiffs' First Request to Produce Documents
Exhibit E	Website screen shots and photographs for GAP Travel
Exhibit F	Corporate records and photographs of the Generation Gap retail store
Exhibit G	Website screen shots and photographs for GAP Self Storage
Exhibit H	U.S. Trademark Registration for THE GAP (no relation to Plaintiffs); specimens of use and Renewal Declaration
Exhibit I	U.S. Trademark Registration for GAP STANDERS; specimens of use
Exhibit J	U.S. Trademark Registration for GAP ANALYSIS; specimens of use

CERTIFICATE OF SERVICE

I hereby certify that on this the 28th day of January 2011, the foregoing DEFENDANT'S MOTION TO PERMIT THE INTRODUCTION OF EVIDENCE AT TRIAL PRODUCED PURSUANT TO FED. R. Civ. P. 26(e) OR, IN THE ALTERNATIVE, THAT THE COURT REOPEN DISCOVERY was served upon the attorney(s) of record for THE GAP, INC. and GAP (APPAREL) LLC, by first class mail at the address set forth below:

Bruce P. Keller, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

Pasquale A. Razzano

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